Filed 3/13/09 McFadden v. Bd. of Building and Safety Commission CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MARY MCFADDEN, Plaintiff and Appellant, v. BOARD OF BUILDING AND SAFETY COMMISSION, Defendant and Respondent.	B196818 (Los Angeles County Super. Ct. No. BS095404)

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed.

Mary McFadden, in pro. per., for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Jeri L. Burge, Assistant City Attorney, and Amy Brothers, Deputy City Attorney, for Defendant and Respondent.

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INTRODUCTION

Plaintiff Mary McFadden appeals from a judgment entered after the trial court denied her petition for writ of mandate. McFadden had sought a peremptory writ commanding the Board of Building and Safety Commissioners (the Board) of the City of Los Angeles (City) to rescind its decision finding that McFadden's property at 1446 W. 37th Drive constituted a public nuisance and that no additional time should be granted to McFadden to abate the nuisance conditions at that property, to hold a new hearing, and to pay monetary damages because of the demolition of the house at the property. We conclude that McFadden has not shown that the Board proceeded without, or in excess of, its jurisdiction, and that McFadden received notice of a hearing the Board held pursuant to its order to abate nuisance conditions at her property. We further find that substantial evidence supported the Board's determination that the subject property premises constituted a public nuisance and that no additional time should be granted McFadden to abate those nuisance conditions. McFadden has not shown error because she did not receive a Board staff member's letter setting forth the history of nuisance conditions at McFadden's property, has not shown that the Board was required to prepare or provide a reporter's transcript of the hearing, and has waived any claim of error arising from the Board's failure to provide her with its staff report or exhibits. McFadden has not shown that the Board denied her access to its rules and procedures or that the Board should be estopped from asserting that McFadden failed to exhaust her administrative remedies. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Los Angeles Municipal Code section 91.8904.1[1] makes it unlawful for an owner of property to permit the accumulation of trash, debris, vehicle parts, rubbish, excessive vegetation, or other similar nuisance conditions on a parcel or in and around any building or structure, and makes it unlawful for an owner to allow to exist a vacant building or

[1] Unless otherwise specified, statutes in this opinion will refer to ordinances in the City of Los Angeles Municipal Code.

structure which is open to unauthorized entry. Section 91.8904.1 requires the entire building or structure to be securely maintained. If any of these public nuisance conditions exist, section 91.8904.1.1 authorizes the Department of Building and Safety (the Department) to issue an order to the owner to abate public nuisance conditions.

Section 91.8904.2.1 defines as a public nuisance "[a]ny vacant buildings open to unauthorized entry, which become fire damaged or used repeatedly by vagrants and gang members or for other illegal purposes without the owner's permission[.]" Section 91.8904.2.2 states: "The Department may declare a vacant building to be a public nuisance building under the following circumstances:

"1. The vacant building has been secured pursuant to Section 91.8904.1;

"2. It has subsequently become open to unauthorized entry; and

"3. It has become fire damaged or is used repeatedly without the owner's permission by vagrants, criminals, or gangs or for other illegal purposes.

"If the Department determines that a vacant building is a public nuisance building as defined in this section, then the Department may proceed to abate the public nuisance building utilizing the procedures set forth in Sections 91.8907.2, 91.8907.3 and 91.8907.4 of this Code. . . ."

From May 1, 1997, through October 18, 2004, the subject property owned by McFadden had suffered from building code violations, disrepair, lack of maintenance, vandalization, use by transients, existing in an open and vacant state subject to unauthorized entry, littered with trash, debris, and abandoned vehicles. The Department had issued numerous orders to abate these conditions. Nuisance conditions recurred after City contractors cleaned, boarded, and fenced the property. This evidence will be set forth in more detail in the section of the discussion, *post*, providing substantial evidence supporting the administrative findings.

On November 3, 2004, the Department mailed an "Order to Comply Abatement of Public Nuisance" to McFadden, stating that the subject property constituted a public nuisance, and requiring McFadden to obtain permits to abate the public nuisance within 10 days, to complete necessary work within 30 days, and to appear at a hearing before the

Board on December 7, 2004, to confirm whether the condition constituted a public nuisance and how much additional time, if any, should be granted for compliance with the order. The order stated: "A description of nuisance condition and any pending assessments are on file with the Department of Building and Safety and with the County Recorder's Office." The order further stated: "At this hearing, you will be given the opportunity to present and elicit testimony and [other] evidence to show cause why the alleged nuisance should not be abated by the owner or by the City using its own forces or through contract." The order advised McFadden that the Board would conduct the hearing whether or not McFadden attended.

The notice was sent by certified mail to McFadden at four different addresses. On November 27, 2004, McFadden signed a return receipt for certified mail sent to her at PO Box 37123, Los Angeles, California, 90037.

On the day of the hearing, December 7, 2004, McFadden faxed to the Board a request to continue the hearing. The Board denied this request. McFadden did not appear at the hearing.

At the December 7, 2004, hearing, the Board unanimously determined that the subject property constituted a public nuisance, and that no additional time should be granted to the owner to abate the property. The Board made the following findings:

1. Photographic evidence and testimony from staff, the field inspector, and Los Angeles Police Department representatives demonstrated that the property was secured pursuant to Section 91.8904.1, subsequently became open to unauthorized entry, and was used repeatedly, without the owner's permission, by vagrants, criminals or gangs or for other illegal purposes.
2. The property owner had made no good faith effort to maintain the premises, and that an extension of time would only be an extension of the violations without regard for the community.

The building was demolished on February 25, 2005.

On March 4, 2005, McFadden filed a petition for writ of mandate commanding the Board to rescind its December 7, 2004, decision, to hold a new hearing, and to pay $700,000 in damages for demolishing the house at the subject property.

On November 1, 2006, McFadden filed a notice of related case, stating that McFadden's administrative mandamus petition was related to another action she filed on October 25, 2006 (Los Angeles County Superior Court No. BC345396) for inverse condemnation, wrongful eviction, and deprivation of civil rights (42 U.S.C. § 1983). The trial court stayed this related case, BC345396, pending resolution of this appeal.

On November 8, 2006, the trial court denied McFadden's petition for writ of mandate. The trial court's statement of decision set forth the remedies against a public nuisance in Civil Code section 3491, which include abatement; the authority in Civil Code section 3494 that a public body or officer may abate a public nuisance; and the authority in Government Code section 38773 that a city's legislative body may provide for summary abatement of a nuisance. The trial court conducted this proceeding as a traditional mandate proceeding under Code of Civil Procedure section 1085. The trial court determined that the Board did not abuse its discretion either by arbitrarily or capriciously refusing to continue the December 7, 2004, hearing when McFadden failed to appear, or by refusing to vacate its decision and rehear the matter when McFadden requested a continuance on the day of the hearing. The trial court also found that the Board's decision to demolish the building was not an abuse of discretion and was not arbitrary, capricious, or supported by no evidence.

On November 20, 2006, McFadden filed a motion for new trial.

On December 11, 2006, judgment was entered denying McFadden's petition for writ of mandate and ordering entry of judgment for the Board.

On January 26, 2007, the trial court denied the new trial motion.

On February 13, 2007, McFadden filed a timely notice of appeal.

ISSUES

McFadden claims on appeal that:

1. The City proceeded in the action without, or in excess of, its jurisdiction;
2. The trial court abused its discretion by denying McFadden's petition for writ of mandate based on Code of Civil Procedure section 1094.6;
3. The trial court abused its discretion by denying McFadden's petition where there were no administrative transcripts of oral testimony to review;
4. The trial court abused its discretion by allowing the City to submit five volumes of administrative record as evidence, and the City never gave McFadden a copy of that record before any administrative proceeding;
5. The trial court abused its discretion by denying McFadden's petition after failing to give notice of the hearing to McFadden.

DISCUSSION

1. *Standard of Review*

McFadden's petition for writ of administrative mandamus sought to compel the Board to rescind its decision determining McFadden's property to constitute a public nuisance and to abate that nuisance by demolishing structures on the property, and to hold a new hearing. The property owner's exclusive remedy to challenge the administrative determination is to bring a petition for writ of mandamus pursuant to Code of Civil Procedure section 1094.5. (Health & Saf. Code, § 17980.8.[2])

The trial court reviews adjudicatory determinations of administrative agencies as follows: "If the order or decision of the agency substantially affects a fundamental vested right, the trial court, in determining under section 1094.5 whether there has been an abuse

[2] Health and Safety Code section 17980.8 states, in relevant part: "Notwithstanding any other provision of law, if a determination that an unsafe or substandard condition exists in any building, or upon the lot upon which it is situated, has been made in an administrative proceeding conducted under this part, including any code incorporated by Section 17922, the enforcement agency may abate the nuisance as provided in this part or exercise any other authority conferred upon it by this part, subject only to the exclusive remedy of the owner to challenge the administrative determination pursuant to Section 1094.5 of the Code of Civil Procedure. The court may exercise its independent judgment on the evidence to determine whether the findings are supported by the weight of the evidence."

of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. If, on the other hand, the order or decision does not substantially affect a fundamental vested right, the trial court's inquiry will be limited to a determination of whether or not the findings are supported by substantial evidence in the light of the whole record." (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32.)[3] With regard to this court's standard of review on appeal, however, it does not matter whether the right is vested and fundamental or whether the trial court subjects the administrative body's findings to independent review or substantial evidence review. In both cases, the standard of review of a trial court's factual determination is whether substantial evidence supports the trial court's findings. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824.)

The trial court found that McFadden received proper notice of the December 7, 2004, administrative hearing and waived her right to such a hearing by failing to appear at that hearing. The trial court therefore found that the administrative proceedings conducted in McFadden's absence did not constitute a hearing required by law,[4] and that McFadden was not entitled to judicial review of the administrative decision pursuant to Code of Civil Procedure section 1094.5. Instead the trial court construed the petition as a proceeding in traditional mandate and reviewed the Board's decision pursuant to section 1085.

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[3] See Code of Cil Procedure section 1094.5, subdivision (c): "Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record."

[4] Administrative mandate is available only if the decision resulted from a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the agency. Ordinary mandate is used to review adjudicatory decisions when the agency was not required to hold an evidentiary hearing. (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1785.)

When review is by ordinary mandate, the trial court is limited to whether the administrative decision was arbitrary, capricious, or entirely lacking in evidentiary support. (*McGill v. Regents of University of California, supra*, 44 Cal.App.4th at p. 1786.) In reviewing traditional mandamus proceedings, this court exercises very limited review, does not weigh the evidence or substitute its judgment for that of the agency, and confines itself to determining whether the agency's action has been arbitrary, capricious, or entirely lacking in evidentiary support. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 230.)

2. *Substantial Evidence Supports the Board's Findings and Determinations*

Substantial evidence supports the Board's determination that the subject property constituted a public nuisance and that no additional time should be granted to the owner to abate that nuisance. Substantial evidence also supports the Board's findings that (1) the property was secured pursuant to section 91.8904.1, later became open to unauthorized entry, and was repeatedly used, without the owner's permission, by vagrants, criminals, or gangs or for other illegal purposes, and (2) the property owner made no good faith effort to maintain the premises, and that an extension of time would only extend the violations without regard to the community. Therefore under either the standard for reviewing traditional mandamus proceedings or for reviewing administrative mandamus proceedings, we conclude that the trial court correctly denied the petition. We review that substantial evidence.

On May 12, 1997, the Department issued an order to comply for the subject property, citing maintenance and repair violations, electrical violations, heating violations, and plumbing violations. The order required the property owner, McFadden, to obtain required permits within 10 days and complete work to eliminate the violations within 30 days. A follow-up inspection on January 12, 1998, revealed that the violations still existed, and on January 20, 1998, an inspector issued an order to comply to eliminate the existing and additional violations. On June 10, 2000, a third order to comply was issued for the same violations.

On November 22, 2000, an inspector visited the property and found an open, vacant, and vandalized single family dwelling being used by transients. The inspector posted an abate order, effective December 7, 2000, at the site. The abate order ordered the property owner to fence the property and board up structures against unauthorized entry and to remove trash, debris, excessive vegetation and nuisance conditions. On June 13, 2001, the inspector observed that the owner had the site cleaned and secured the dwelling from unauthorized entry.

By May 1, 2002, the property was found open. The owner re-secured the property on June 20, 2002.

The property was again found open on December 6, 2003. In January 2004, the December 7, 2000, abate order was again mailed to the property owner. On February 4, 2004, an Abandoned Building Task Force inspector found the site open to unauthorized entry and being used by transients, and with trash, debris, and abandoned vehicles. After receiving no compliance from the property owner, City contractors cleaned, boarded, and fenced the site to City standards, with this work being completed on March 16, 2004.

On September 22, 2004, a Department inspector found that the single family dwelling, which was secured in March 2004, had been broken into and reentered without the owner's consent. Two additional vehicles were found at the site, one of which had been reported stolen in Arizona. The site was rebarricaded on October 18, 2004.

McFadden did not appear at the December 7, 2004, hearing before the Board and provided no testimony or evidence that nuisance conditions did not exist at the subject property or that the nuisance should not be abated.

We conclude that substantial evidence supported the Board's findings and determinations.

3. *McFadden Has Not Shown That the Board Proceeded Without, or in Excess of, Its Jurisdiction*

McFadden claims that the Board proceeded without, or in excess of, its jurisdiction. McFadden argues that the Board conducted an emergency hearing pursuant

to section 91.8905, and after the emergency was required to conduct an administrative adjudication hearing pursuant to Government Code sections 11460.10 et seq.

The Board, however, did not conduct an emergency hearing pursuant to section 91.8905. After issuing numerous orders to abate nuisance conditions at the subject property, the Department mailed an "Order to Comply Abatement of Public Nuisance" to McFadden pursuant to section 91.8904.2.2, which authorizes the Department to abate the public nuisance building using procedures in sections 91.8907.2, 91.8907.3, and 91.8907.4. This order, which was notice required by section 91.8907.2, informed McFadden that she had to appear at a hearing conducted by the Board on December 7, 2004, as required by section 91.8907.2. As the trial court found, McFadden received this notice, having signed a return receipt for certified mail on November 27, 2004. The hearing was conducted on December 7, 2004, pursuant to sections 91.8907.3.1, 91.8907.3.2, 91.8907.3.3, and 91.8907.3.4, as authorized by section 91.8904.2.2.[5] The hearing was not an emergency hearing conducted pursuant to section 91.8905. Moreover, Government Code section 11460 et seq. applies to agencies of the State of

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[5] Section 91.8904.2.2 states, in relevant part: "The Department may declare a vacant building to be a public nuisance building under the following circumstances:

"1. The vacant building has been secured pursuant to Section 91.8904.1;
"2. It has subsequently become open to unauthorized entry; and
"3. It has become fire damaged or is used repeatedly without the owner's permission by vagrants, criminals, or gangs or for other illegal purposes.

"If the Department determines that a vacant building is a public nuisance building as defined in this section, then the Department may proceed to abate the public nuisance building utilizing the procedures set forth in Sections 91.8907.2, 91.8907.3 and 91.8907.4 of this Code." Sections 91.8907.2, 91.8907.3 and 91.8907.4 provide for an order posted on the premises giving notice that the condition on the premises constitutes a public nuisance, requiring the owner to appear at a hearing conducted by the Board where the owner can present and elicit testimony and other evidence to show cause why the alleged nuisance should not be abated by the owner or by the City, and that if a public nuisance is found to exist which the owner fails to abate, the Department has the authority to demolish hazardous buildings and remove debris, rubbish or other materials to abate public nuisance conditions.

California (*id.* at § 11000), not to the City of Los Angeles, which has independent statutory authority to institute appropriate actions or proceedings to prevent, restrain, correct, or abate a nuisance in vacant single-family dwellings (Health & Saf. Code, section 17980.9) and to abate, raze, or remove a dwelling declared a nuisance (*id*. at section 17980.10).

McFadden claims that the Board never issued her a notice of accusation pursuant to section 98.0303 before an administrative hearing or a notice of hearing on accusation pursuant to section 98.0305, and did not conduct an administrative hearing pursuant to section 98.0302. These ordinances, however, concern notice and hearing required or available under the Los Angeles Municipal Code regarding licenses. (See sections 98.0202, 98.0303, and 98.0103, subd. (a).) These ordinances do not apply to a proceeding to abate a nuisance.

We therefore reject McFadden's claim that the Board proceeded without or in excess of its jurisdiction.

4. *A December 1, 2004, Board Staff Member's Letter Was Not Required to Be Served on McFadden*

McFadden claims she did not receive a December 1, 2004, four-page letter, signed by Andrew Longoria, a Board staff member, setting forth the history of inspections, code violations, nuisance conditions, orders to comply and orders to abate at the subject property from 1997 through November 4, 2004, the City ordinances applicable to the Board's action to determine whether the premises were a public nuisance, and how much additional time, if any, should be given to the owner to comply with the Department's order. McFadden characterizes this as a Notice of Accusation, and claims it was never mailed to her.

Section 98.0303, subdivision (a) requires an accusation "[w]henever a hearing is required or available by this Code to determine whether a license as defined herein should be revoked[,] suspended, limited or conditioned," and subdivision (b) requires service of that accusation on a respondent. These provisions, however, apply to the revocation or suspension of licenses (sections 98.0104, 98.0202), defined as

"[a] certificate, registration, license, authority or approval given or issued by the Department pursuant to the provisions of this Code." (Section 98.0103.) The proceeding involving McFadden's property was not a license revocation proceeding and Longoria's December 1, 2004, letter was not a Notice of Accusation. It was not required to be served on McFadden. We find no error.

5. *The City Was Not Required to Prepare, or to Provide, a Reporter's Transcript of the December 7, 2004, Hearing*

McFadden claims on appeal that there is no evidence that an administrative hearing was ever held on the merits of this case because there is no transcript of any oral testimony, and that it was a prejudicial abuse of discretion for the trial court to deny McFadden's mandamus petition where there was no transcript of oral testimony to review. The record, however, contains the Board's minutes. Those minutes reflected that the President, Vice-President, and three Commissioners of the Board were present, as were Superintendent of Building Andrew A. Adelman, Deputy City Attorney Tayo Popoola, and Acting Board Secretary Peter Kim. Other persons in attendance were Vivnech Fisher, a neighbor; Los Angeles Police Officers Gary Cantu and Emada Castillo; Code Enforcement Bureau Chief Ruben Perez; Senior Inspector Dan Wray and Inspector Ben Mathias of the Abandoned Building Task Force Section of the Code Enforcement Bureau; and Staff Inspector Andrew Longoria. Exhibits included a December 1, 2004, Department Staff Report; 14 Power Point slides presented to the Board and printed for the Board file; a two-page December 7, 2004, letter from Mary McFadden, received via facsimile; copies of return receipts for mailing the notice of hearing; and a two-page December 6, 2004, letter from Gene F. Hardemion, a neighbor. The minutes reflect the Board's denial of McFadden's request for a continuance; a motion to determine that the premises constituted a public nuisance, passed by a unanimous vote; and a motion that no additional time be granted to the owner to abate the property, passed by a unanimous vote. The minutes further reflect the board's findings that the property was secured pursuant to section 91.8904.1, later became open to unauthorized entry and was used repeatedly without the owner's permission by vagrants, criminals or gangs or for illegal

purposes, and that McFadden made no good faith effort to maintain the premises and an extension of time would only be an extension of the violations without regard for the community.

Section 91.8904.2.2 states, in relevant part: "If the Department determines that a vacant building is a public nuisance building as defined in this section, then the Department may proceed to abate the public nuisance building utilizing the procedures set forth in Sections 91.8907.2, 91.8907.3 and 91.8907.4 of this Code." Section 91.8907.3 sets forth procedures for a pre-abatement hearing. Section 91.8907.3.2 states: "The person notified to appear, or the actual owner of the parcel or premises in the event the person notified is not the owner, or any person representing the owner, who attends the hearing, shall be given an opportunity to present and to elicit testimony and any other evidence on whether a public nuisance exists, and to show cause why the alleged nuisance conditions should not be abated by the owner or by the City using its own forces or through contract. The Board shall proceed with the hearing whether or not such person is in attendance. Written material shall be considered by the Board if it is received three days prior to the scheduled hearing." This section does not require preparation of a transcript of the hearing. McFadden again argues that the proceeding was held under section 98.0301 et seq., and that the Los Angeles Municipal Code requires preparation of a reporter's transcript of such hearings. As we have found, however, section 98.0301 et seq. did not apply to this nuisance proceeding. Moreover, a reporter's transcript of a proceeding under section 98.0301 et seq. is only required "if requested by any party thereto." (Section 98.0302, subd. (c).) McFadden made no request that the December 7, 2004, hearing be reported. We find no error.

6. *McFadden Waived Any Claim of Error Arising From the Board's Failure to Provide Her With its Staff Report or Exhibits*

McFadden claims that before the December 7, 2004, hearing, she never received the Board staff report or exhibits submitted to the Board as evidence.

First, by failing to make this objection at the hearing, McFadden forfeited this claim of error on appeal. (*Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1481.)

Second, there was no requirement that she be provided with a copy of the Board staff report, which McFadden mischaracterizes as an "accusation." Pursuant to section 98.0303, subdivisions (a) and (b), the City initiates a proceeding to revoke, suspend, limit, or condition a license by filing an accusation and serving it on the respondent. This requirement, however, does not apply to this case, which was not a proceeding pursuant to section 98.0301, et seq. This case was instead a proceeding pursuant to section 91.8904.2. A section 91.8904.2 proceeding is governed by sections 91.8907.2, 91.8907.3, and 91.8907.4. (Section 91.8904.2.2.) Those sections do not require an "accusation," but instead require a notice of the hearing pursuant to section 91.8907.2. The City sent such notice of the December 7, 2004, hearing to McFadden.

We find no error.

7. *McFadden Has Not Shown That the Board Denied Her Access to Its Rules and Procedures, or That the Board Should Be Estopped From Asserting That McFadden Failed to Exhaust Her Administrative Remedies*

McFadden claims that during the administrative and trial court proceedings, the Board denied her access to its rules and procedures. McFadden cites only a series of e-mails to a deputy city attorney in which she requested appeal procedures of the Board and the Department. She was informed that appeal procedures were explained in sections 91.8907 et seq. of the Los Angeles Municipal Code. There was no denial of access to rules and procedures.

McFadden claims that the Board failed to proceed in the manner required by law as required by Code of Civil Procedure section 1094.5, subdivision (b). McFadden specifically claims that the Board's counsel informed the trial court that the Board conducted its hearing pursuant to section 91.8907.3, which McFadden asserts is the wrong municipal code section. McFadden is incorrect; section 91.8907.3 is one of the municipal code sections which governs a section 91.8904.2 proceeding.

McFadden claims that the Board misled the trial court by stating that McFadden had failed to exhaust all of her administrative remedies by failing to comply with section 91.8907.3. McFadden again argues that the Board hearing was not held under section 91.8907.3, but instead were held under sections 98.0301 to 98.0311. We have rejected this incorrect argument.

McFadden also argues that a governmental entity can be estopped from asserting a failure to exhaust administrative remedies as a defense to a petition for writ of administrative mandate where the governmental entity's agent has negligently or intentionally caused the petitioner to fail to comply with a procedural precondition to recovery. (*Shuer v. County of San Diego* (2004) 117 Cal.App.4th 476, 486.) Specifically, McFadden argues that the Board refused to provide her with a copy of Board rules and procedures for conducting its hearing, but these were available in the Los Angeles Municipal Code. McFadden again argues that the Board stated that the hearing would be held under the wrong Municipal Code section, failed to serve her with a notice of accusation pursuant to section 98.0303, and did not issue a notice of hearing pursuant to section 98.0303, subdivision (a), which arguments we have rejected.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendant Board of Building and Safety Commission of the City of Los Angeles.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.